

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRIAN JENNINGS,
CDCR #AU-2511,

Plaintiff,

vs.
JUSTIN POLANCO, M.D., et al.,

Defendants.

Civil No. 15-cv-0890 LAB (BGS)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Brian Jennings (“Plaintiff”), currently incarcerated at the California Correctional Institution located in Tehachapi, California, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

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1 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff's failure to
 2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 3 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner, and
 5 even if he is granted leave to commence his suit IFP, he remains obligated to pay the
 6 entire filing fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.
 7 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1)
 8 & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 10 commence this civil action, nor has he submitted a properly supported Motion to Proceed
 11 IFP pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28
 12 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

13 II. Conclusion and Order

14 For the reasons set forth above, the Court hereby:

15 (1) **DISMISSES** this action sua sponte without prejudice for failure to pay the
 16 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to
 17 28 U.S.C. §§ 1914(a) and 1915(a); and

18 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is
 19 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; *or*
 20 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust
 21 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
 22 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

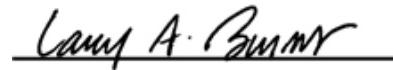
23 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
 24 with this Court's approved form "Motion and Declaration in Support of Motion to
 25 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee or

27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional
 28 administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of
 Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50
 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 complete and submit the enclosed Motion to Proceed IFP within 45 days, this action will
2 remain dismissed without prejudice based on Plaintiff's failure to satisfy 28 U.S.C.
3 § 1914(a)'s fee requirements and without further Order of the Court.

4 **IT IS SO ORDERED.**

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6 DATED: April 27, 2015

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8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge

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